IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 282/2005

1. Hardesh Ores Private Limited
a company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its Registered Office at Vila Flores da Silva, Erasmo Carvalho Street, Margao, Goa 403 601.

2. Sociedade De Fomento Industrial Private Limited,
a company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its Registered Office at Vila Flores da Silva, Erasmo Carvalho Street, Margao, Goa 403 601. ..... Petitioners

V/s.

1. Timblo Minerals Private Limited,
a company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its Registered Office at Kadar Manzil, P.B. No.34, Margao, Goa 403 601.

2. Timblo Private Limited,
a company incorporated under the Companies Act, 1956 (Act 1 of 1956), having its Registered Office at Kadar Manzil, P.B. No.34, Margao, Goa 403 601.

3. Ramakant Rajaram Painguinkar,
major of age, resident of Shri Damodar Co-op. Housing Society, Building No.2, Flat No.1, Aquem, Margao, Goa 403 601. ..... Respondents

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudesh Usgaonkar, Miss P. Kamat, Mr. E. Kotwal and Mr. G. Mallya, Advocates for the petitioners.

Mr. S. K. Kakodkar, Senior Advocate with Mr. J. J. D'Souza, Advocate for the respondents No.1 and 2.

Mr. A. N. S. Nadkarni, with Mr. H.D. Naik and N. Takkekar, Advocates for the respondent No.3.

CORAM : R.M. LODHA, J.

DATE : 16TH SEPTEMBER, 2005.

ORAL ORDER

Mr. M. S. Usgaonkar, the learned Senior Counsel for the petitioners prays for withdrawal of this writ petition with liberty to the petitioners to make an appropriate application before the trial Court for production of the documents referred to in the application dated 23.06.2005 in accordance with law and also to challenge the impugned order in appeal against the Judgment and Decree, if necessary.

2. The prayer made by the learned Senior Counsel for the petitioners is fair and reasonable. In the application dated 23.6.2005 that has been dismissed by the impugned order by the

trial Court, the following prayers were made :

> "(a) that DW3 be allowed to be re-examined under the provisions of S.138 of the Evidence Act in respect of the matters enumerated hereinabove and
>
> (b) that these Defendants be granted leave by this Hon'ble Court to rely upon and produce in evidence during the course of re-examination, the documents annexed hereto as Annexures 1(a), 1(b), 1(c), 2, 3, 4 and 5."

3. The impugned order has to be read in the light of the prayers made in the application dated 23.06.2005 as aforenoted. In other words, by the impugned order, the trial Court has declined the petitioners' prayer for re-examination of DW.3 and production of the documents referred to in the application in evidence during the course of re-examination of the said witness (DW.3). Obviously, the dismissal of the application by the impugned order cannot preclude the petitioners from making an appropriate application before the trial Court for production of the documents referred to in the application in evidence in accordance with law. If such an application is made, needless to say that the same would be

considered and decided by the trial Court after hearing the parties in accordance with law.

4. It is further clarified that withdrawal of this writ petition shall not preclude the petitioners from challenging the impugned order in the appeal against the Judgment and Decree, if advised and necessary.

5. Though the prayer for withdrawal of the writ petition was made by the learned Senior Counsel for the petitioners and the writ petition is being disposed of as withdrawn, the learned Senior Counsel for the respondents No.1 and 2 insists that in the light of the decision given by the Supreme Court in the case of ***Surya Dev Rai vs. Ram Chander Rai and others,*** (2003) 6 SCC 675, I must rule on the question of maintainability of the writ petition. I fail to appreciate the submission and insistence of the learned Senior Counsel for the respondents No.1 and 2. The question of ruling on the issue of maintainability of writ petition does not arise when the writ petition itself has not been pressed by the learned Senior Counsel for the petitioners and the prayer for withdrawal of writ petition with liberty as noticed above has been

made.

Writ petition is disposed of as withdrawn with liberty as prayed.

R.M. LODHA, J.

ssm.